IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 3313 of 2004(T)

PETITIONER:
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1. TOMY ABRAHAM.B.S.C.,B.ED., H.S.A.
PHYSICAL SCIENCE, G.H.S.S. VELLAMUNDA,
KATTAYAD P.O., WAYANAD DISTRICT

2. K.G.GIRIJA DEVI. B.SC., B.ED, H.S.A.
PHYSICAL SCIENCE) G.H.S.S. MEPPADI, MEPPADI P.O.,
WAYANAD DISTRICT

3. MANOHARAN V., B.SC. B.ED, H.S.A.,
(PHYSICAL SCIENCE), G.H.S.A. ACHOOR,
ACHOORANAM.P.O., WAYANAD DISTRICT

4. V.D.GEORGE, B.SC., B.ED., H.S.A.,
(PHYSICAL SCIENCE), G.H.S.S. MEPPADI, MEPPADI P.O.
WAYANAD DISTRICT

5. SHYNAMMA XAVIER, B.SC., B.ED., H.S.A
(PHYSICAL SCIENCE), G.H.S.S. KANIYAMBETTA,
KANIYAMBETTA.P.O., WAYANAD DISTRICT

6. C.RAMAKRISHNAN, B.SC., B.ED., H.S.A.,
PHYSICAL SCIENCE), G.H.S. VADUVANCHAL,
VADUVANCHAL P.O., WAYANAD DISTRICT

7. K.SATHYANDRAN, B.SC., B.ED., H.S.A.
(PHYSICAL SCIENCE), G.H.S. KARTIKULAM,
KARTIKULAM P.O., WAYANAD DISTRICT.

BY ADV. SRI.M.SASINDRAN

RESPONDENTS:
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1. THE DEPUTY DIRECTOR OF EDUCATION,
WAYANAD.

2. THE STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL
EDUCATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVT.PLEADER SRI.V.T.K.MOHANAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF THE GO(MS) NO.120/99/G.EDN. DT. 25.5.1999.

EXT.P2 : TRUE COPY OF THE ORDER DT. 5.8.1999 ISSUED TO THE FIRST RESPONDENT GRANTING TEMPORARY PROMOTION TO THE PETITIONERS.

EXT.P3 : TRUE COPY OF THE ORDER DT. 18.10.1999 ISSUED TO THE FIRST RESPONDENT GRANTING TEMPORARY PROMOTION TO THE PETITIONER.

EXT.P4 : TRUE COPY OF THE THE SENIORITY LIST OF P.D.TEACHERS ELIGIBLE FOR PROMOTION AS has (PHYSICAL SCIENCE) 1999-2000.

EXT.P5 : TRUE COPY OF THE INTERIM ORDER DT. 21.1.2002 IN CMP NO.39136/01 IN O.P.NO.23836/01.

EXT.P6 TRUE COPY OF THE ORDER DT. 23.5.2002 ORDERING REVERSION OF THE PETITIONERS FROM THE POST OF H.S.A.

EXT.P7 TRUE COPY OF THE JUDGMENT DT. 24.6.2002 IN O.P.NO.23836/01.

EXT.P8 TRUE COPY OF THE ORDER DT. 27.9.2002 ISSUED BY THE FIRST RESPONDENT.

EXT.P9 TRUE COPY OF THE ORDER DT. 9.7.2003.

EXT.P10 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 4TH PETITIONER TO THE FIRST RESPONDENT.

EXT.P11 TRUE COPY OF THE ORDER DT. 5.11.2003 ISSUED BY THE FIRST RESPONDENT DIRECTING RECOVERY OF THE DIFFERENCE IN THE AMOUNT PAID FROM 8.8.1999 TO 24.6.2003 FROM THE FIRST PETITIONER.

EXT.P12 TRUE COPY OF THE ORDER ISSUED IN RESPECT OF THE 5TH PETITIONER TO RECOVER THE DIFFERENCE IN THE SALARY PAID FROM 29.11.1999 TO 23.6.2002.

EXT.P13 TRUE COPY OF THE ORDER FOR RECOVERY IN RESPECT OF THE 7TH PETITIONER DT. 3.12.2003.

TGS

KURIAN JOSEPH J.

W.P.(C) No.3313 of 2004

Dated 17th August, 2007.

J U D G M E N T

Petitioners are aggrieved by the steps taken by the respondents for recovery of the salary already paid to them while working as High School Assistants on temporary basis. According to them, if the cadre strength is properly computed, they are liable to be regularised with effect from the date of their regular promotion. In any case, it is submitted that for the period they actually worked on temporary basis, there cannot be any recovery. They place reliance on various judgments of this Court. There is no counter affidavit yet. In Ext.P7 judgment, this Court directed the Deputy Director to consider the case of the petitioners for retrospective promotion. That apparently has not been done. Therefore, the writ petition is disposed of directing the first respondent to consider the case of the petitioners in the light of Ext.P7 judgment, with notice to them and pass fresh orders with regard to the cadre strength and their eligibility for promotion with effect from the dates when the vacancies arose. In view of Ext.P7 judgment that the petitioners are entitled to the

salary in the promoted post with effect from the date of officiation, there cannot be recovery of salary for the period they actually worked in the promoted post of High School Assistant.

KURIAN JOSEPH, JUDGE.

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